

In the Matter of License No. 245613
Issued to: DELMER E. CHANDLER, BK 183022

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1470

DELMER E. CHANDLER, BK 183022

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 21 May 1964, an Examiner of the United States Coast Guard at Cleveland, Ohio, suspended Appellant's license for eight months upon finding him guilty of negligence. The specification found proved alleges that while serving as chief engineer on board the United States SS WILLIAM A. IRVIN under authority of the license above described, on or about 10 April 1964, Appellant negligently directed repairs to be made in an unsafe manner to a waterwall tube of one of the vessel's boilers, leading to the death of one of the crew and injuries to two others.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a stipulation of facts entered by himself and counsel, with the consent of Appellant, two photographs and the testimony of the vessel's first assistant engineer.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved.

The entire decision was served on 25 May 1964. Appeal was timely filed on 22 June 1964.

FINDINGS OF FACT

On 10 April 1964, Appellant was serving as chief engineer on board the United States SS WILLIAM A. IRVIN and acting under authority of his license while the ship was in the Great Lakes enroute to Duluth, Minnesota. When a leak was discovered between

a tube and the lower header in the rear waterwall, the vessel was anchored in the St. Mary's river. Inspection showed that the tube had been improperly rolled into the header. An attempt was made to reroll the tube but the leak continued. Appellant, having decided that the vessel could not safely continue to Duluth on one boiler, ordered that the tube be plugged, top and bottom. When the plugs were inserted the tube was dry.

The boiler was re-fired at 1935 and the vessel proceeded on its voyage. For some time thereafter the leak continued, but later, probably because of expansion of the tube, it stopped.

At 1708 on the next day, 11 April 1964, with boiler pressure at about 400 pounds, the lower end of the plugged tube burst. The furnace door was blown open and coal, steam, and hot water erupted through the opening. A coal passer, a fireman, and a maintenance man were working in front of the boiler at the time. All were injured and the coal passer died as a result.

Appellant had four assistant engineers on this voyage and all were involved to some extent in the process of plugging the tube. No one suggested the possibility of venting the tube before firing the boiler. Appellant had never before had occasion to plug a tube. The first assistant had done so on several occasions but in every case the tube had already been ruptured.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is excessive. No appeal has been taken from the findings of the Examiner.

APPEARANCE: Arter, Hadden, Wykoff and Van Duzer, Cleveland, Ohio, by Robert B. Preston, Esquire.

OPINION

Appellant here admits negligence in failing to anticipate that water might enter the plugged tube with a consequent building up of internal pressure. His contention is that this was ordinary negligence, not gross, and that the suspension ordered is therefore excessive.

Appellant contends, quite properly, that the degree of negligence is not measured by the seriousness of its consequences. The rupture of the tube was foreseeable. The specific conditions that led to the fatality were not.

The degree of negligence exhibited here was not gross. It is

noteworthy that in this case five licensed engineers participated in the work and not one recollected at the time the principle that a plugged tube should be vented. This inattention may well have been produced by the fact that in the ordinary case a tube is secured precisely because it has been ruptured.

It appears to me that the negligence here, within the degrees contemplated in 46 CFR 137.20-165, is ordinary negligence. In the light of Appellant's long and excellent prior record, and in the knowledge that he has been deeply impressed by the casualty in this case, I am of the opinion that the order here should be reduced to a suspension of three months.

ORDER

The order of the Examiner dated at Cleveland, Ohio, on 21 May 1964 is MODIFIED to provide for a suspension of Appellant's license for three months from 21 May 1964 and, as modified, is AFFIRMED.

W. D. SHIELDS
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 14th day of September 1964.